



DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[Docket No. FWS-R4-ES-2022-0109; FXES11140400000-223-FF04EN1000]

Programmatic Enhancement of Survival Permit for a Safe Harbor Agreement and Candidate Conservation Agreement with Assurances for Aquatic Species in North Carolina; Categorical Exclusion

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability; request for comments and information.

SUMMARY: We, the Fish and Wildlife Service (Service), have received an application from the North Carolina Wildlife Resources Commission (applicant, NCWRC) for an enhancement of survival permit for take of aquatic species in North Carolina. The applicant also submitted a combined proposed programmatic safe harbor agreement (SHA) and candidate conservation agreement with assurances (CCAA) in support of the application. The Service has prepared an environmental action statement and low-effect screening form, both of which are also available for public review. We invite the public and local, State, Tribal, and Federal agencies to comment on these documents.

DATES: We must receive your written comments on or before [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*].

ADDRESSES: *Obtaining Documents:* You may obtain copies of the documents at <https://www.regulations.gov> in Docket No. FWS-R4-ES-2022-0109.

Submitting Comments: If you wish to submit comments on any of the documents, you may do so in writing by any of the following methods:

- *Online:* <https://www.regulations.gov>. Follow the instructions for submitting comments on Docket No. FWS-R4-ES-2022-0109.
- *U.S. mail or hand-delivery:* Public Comments Processing, Attn: Docket

No. FWS-R4-ES-2022-0109; U.S. Fish and Wildlife Service, MS:

JAO/3W, 5275 Leesburg Pike, Falls Church, VA 22041–3803.

FOR FURTHER INFORMATION CONTACT: Jason Mays, by telephone at 828-747-2394 or via email at *jason_mays@fws.gov*. Individuals in the United States who are deaf, deafblind, hard of hearing, or have a speech disability may dial 711 (TTY, TDD, or TeleBraille) to access telecommunications relay services. Individuals outside the United States should use the relay services offered within their country to make international calls to the point-of-contact in the United States.

SUPPLEMENTARY INFORMATION: We, the Fish and Wildlife Service (Service), have received an application from the North Carolina Wildlife Resources Commission (applicant, NCWRC) for an enhancement of survival permit for take of aquatic species in North Carolina. The applicant also submitted a combined proposed programmatic safe harbor agreement (SHA) and candidate conservation agreement with assurances (CCAA) (agreement) in support of the application. The applicant intends to implement the agreement to actively manage the covered species to benefit the recovery of federally listed species and to prevent the need to list candidate species within the boundaries of State of North Carolina. The Service has made a preliminary determination that the proposed agreement qualifies as “low-effect,” categorically excluded, under the National Environmental Policy Act. To make this determination, we used our environmental action statement and low-effect screening form, both of which are also available for public review.

Covered Species

The Service and the applicant have mutually agreed that the following 21 aquatic species (covered species) will benefit from the implementation of management activities on private lands enrolled by NCWRC as part of the agreement.

Common name	Scientific name	Status (endangered or threatened)	Where listed
FISHES			
Chub, Spotfin	<i>Erimonax monachus</i>	Threatened	Wherever found, except where listed as an experimental population
Floater, Brook	<i>Alasmidonta varicosa</i>	N/A	N/A
Logperch, Roanoke	<i>Percina rex</i>	Endangered	Wherever found
Madtom, Carolina	<i>Noturus furiosus</i>	Endangered	Wherever found
Madtom, orangefin	<i>Noturus gilberti</i>	N/A	N/A
Redhorse, robust	<i>Moxostoma robustum</i>	N/A	N/A
Shiner, Cape Fear	<i>Notropis mekistocholas</i>	Endangered	Wherever found
Sturgeon, lake	<i>Acipenser fulvescens</i>	N/A	N/A
CLAMS			
Clubshell, Tennessee	<i>Pleurobema oviforme</i>	Under Review	N/A
Elktoe, Appalachian	<i>Alasmidonta raveneliana</i>	Endangered	Wherever found
Floater, green	<i>Lasmigona subviridis</i>	Under Review	N/A
Heelsplitter, Carolina	<i>Lasmigona decorata</i>	Endangered	Wherever found
Lance, yellow	<i>Elliptio lanceolata</i>	Threatened	Wherever found
Longsolid	<i>Fusconaia subrotunda</i>	Proposed Threatened	Wherever found
Moccasinshell, Cumberland	<i>Medionidus conradicus</i>	Under Review	N/A
Pigtoe, Atlantic	<i>Fusconaia masoni</i>	Threatened	Wherever found
Spinymussel, James	<i>Parvaspina collina</i>	Endangered	Wherever found
Spinymussel, Tar River	<i>Parvaspina steinstansana</i>	Endangered	Wherever found
Wedgemussel, dwarf	<i>Alasmidonta heterodon</i>	Endangered	Wherever found
SNAILS			
Ramshorn, magnificent	<i>Planorbella magnifica</i>	Candidate	N/A
AMPHIBIANS			
Waterdog, Neuse River	<i>Necturus lewisi</i>	Threatened	Wherever found

The covered species that are already listed as endangered or threatened under the Endangered Species Act of 1973, as amended (ESA; 16 U.S.C. 1531 *et seq.*), would be

eligible for the SHA component of the agreement, while species currently not listed, including species considered to be candidate and proposed species at the time of its issuance, would be eligible for the CCAA component of the agreement. NCWRC is requesting a permit that would be valid for a period of 50 years from the date of permit issuance, with the possibility of extension if requested by the applicant in accordance with the Service's applicable implementing regulations. We request public comment on the application, which includes the agreement, and on the Service's preliminary determination that this agreement qualifies as "low effect," categorically excluded under the National Environmental Policy Act (NEPA; 42 U.S.C. 4321 *et seq.*). To make this determination, we used our environmental action statement and low-effect screening form, both of which are also available for public review.

Background

Section 9 of the ESA prohibits the take of fish and wildlife species listed as endangered or threatened under section 4 of the ESA. Under the ESA, the term "take" means to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct (16 U.S.C. 1532(19)). The term "harm," as defined in our regulations, includes significant habitat modification or degradation that results in death or injury to listed species by significantly impairing essential behavioral patterns, including breeding, feeding, or sheltering (50 CFR 17.3). The term "harass" is defined in our regulations as an intentional or negligent act or omission that creates the likelihood of injury to wildlife by annoying it to such an extent as to significantly disrupt normal behavioral patterns, including, but not limited to, breeding, feeding, or sheltering (50 CFR 17.3). Under specified circumstances, however, we may issue permits that authorize take of federally listed species, provided that the take is incidental to, but not the purpose of, an otherwise lawful activity. Regulations governing permits for threatened species are in the Code of Federal Regulations (CFR) at 50 CFR 17.32.

Under an SHA, participating landowners voluntarily undertake management activities on their property to enhance, restore, or maintain habitat benefiting species listed under the ESA. SHAs and the associated certificates of inclusion issued to participating landowners pursuant to section 10(a)(1)(A) of the ESA encourage private and other non-Federal property owners to implement conservation actions for federally listed species by assuring the landowners that they will not be subjected to increased property use restrictions as a result of their efforts to either attract listed species to their property or increase the numbers or distribution of listed species already on their property. Enrolled landowners may make lawful use of the enrolled property during the permit term and may incidentally take the listed species named on the permit.

Application requirements and issuance criteria for permits associated with SHAs are found at 50 CFR 17.22(c) and 17.32(c). As provided in the Service's final Safe Harbor Policy (64 FR 32717; June 17, 1999), SHAs provide assurances that allow the property owner to alter or modify their enrolled property, even if such alteration or modification results in the incidental take of a listed species to such an extent that the property is returned to the originally agreed-upon baseline conditions existing at the time of enrollment. Private landowners may voluntarily terminate an SHA at any time, in accordance with 50 CFR 13.26. If this occurs, landowners must relinquish the associated certificate of inclusion authorizing incidental take pursuant to section 10(a)(1)(A) of the ESA.

Under a CCAA, participating property owners voluntarily undertake management activities on their properties to enhance, restore, or maintain habitat benefiting species that may warrant listing under the ESA. CCAAs encourage private and other non-Federal property owners to implement conservation efforts for candidate and at-risk species by assuring that they will not be subjected to increased property use restrictions should the species become listed as threatened or endangered under the ESA in the

future. As provided in the Service's Candidate Conservation Agreement with Assurances Policy (81 FR 95164; December 27, 2016), CCAAs provide assurances that allow the property owner to alter or modify their enrolled property, even if such alteration or modification results in the incidental take of a listed species to such an extent that the property is returned to the originally agreed-upon existing conditions present at the time of enrollment. Application requirements and issuance criteria for enhancement of survival permits through CCAAs are found in 50 CFR 17.22(d) and 17.32(d).

Proposed Safe Harbor Agreement

The private or State lands enrolled in the proposed SHA will consist of those properties identified by the applicant and approved by the Service within the State of North Carolina where the conditions for an agreement with a landowner (landowner agreement) meet the needs for management activities for one or more of the covered species already listed as endangered or threatened by the ESA. Lands that are suitable for inclusion must be located within the species' native range but where the species is not currently found, and must contain suitable habitat conditions for the species. The intention of the SHA is for the applicant to reintroduce and manage populations of these species to benefit their recovery, but to do so where their re-establishment does not interfere with the management of existing populations. As such, the baseline assigned to these properties at enrollment will be zero, because none of the covered species would be present. Under the landowner agreement, the cooperator will agree to (1) provide for habitat enhancement activities on their property; (2) allow access by the applicant and the Service to conduct management activities; (3) and only engage in take of the covered species that is incidental to otherwise lawful activities. The Service seeks comment on NCWRC's request for issuance of a permit with a 50-year term that allows the applicant to find and enroll cooperators for the benefit of the covered species.

Proposed Candidate Conservation Agreement with Assurances

The private or State lands covered under the proposed CCAA will consist of those areas identified by the applicant, and approved by the Service, within the State of North Carolina where the conditions for an agreement with a private landowner meet the needs for species management activities for one or more of the covered species that are not already listed as endangered or threatened under the ESA. Lands that are suitable for inclusion must have a willing landowner (cooperator) whose property contains suitable habitat conditions for the species, within the native range of the species, but where the species is not currently found. The intention of the CCAA is for the applicant to reintroduce and manage these species to benefit their long-term conservation and possibly preclude or remove the need to list the species under the ESA, but to do so where re-establishment does not interfere with the management of existing populations. As such, the existing conditions on these properties will be zero, as the species would not be present on the property. Under the landowner agreement, the cooperator will agree to (1) provide for habitat enhancement activities on their property; (2) allow access by the applicant and the Service to conduct management activities; and (3) only engage in take of the covered species that is incidental to otherwise lawful activities. The Service seeks comment on NCWRC's request for issuance of a permit with a 50-year term that allows the applicant to find and enroll cooperators for the benefit of the covered species.

National Environmental Policy Act Compliance

The issuance of this permit is a Federal action that triggers the need for compliance with NEPA. The Service has made a preliminary determination that the proposed permit issuance is eligible for categorical exclusion under NEPA, based on the following criteria: (1) Implementation of the SHA and CCAA would result in minor or negligible adverse effects on federally listed, proposed, and candidate species and their habitats; (2) implementation of the SHA and CCAA would result in minor or negligible adverse effects on other environmental values or resources; and (3) impacts of the SHA

and CCAA, considered together with the impacts of other past, present, and reasonably foreseeable similarly situated projects, would not result, over time, in cumulative adverse effects to environmental values or resources which would be considered significant. To make this determination, we used our EAS and low-effect screening form, which are also available for public review.

Public Availability of Comments

Before including your address, phone number, email address, or other personal identifying information in your comment, be aware that your entire comment—including your personal identifying information—may be made available to the public. While you may request that we withhold your personal identifying information, we cannot guarantee that we will be able to do so.

Next Steps

The Service will evaluate the application and the comments received to determine whether to issue the requested permit. We also will conduct an intra-Service consultation pursuant to section 7 of the ESA to evaluate the effects of the proposed take. After considering the above findings, we will determine whether the permit issuance criteria of section 10(a)(1)(A) of the ESA have been met. If met, the Service will issue a permit to the applicant for the incidental take of the covered species.

Authority

We provide this notice under section 10(c) of the ESA (16 U.S.C. 1531 *et seq.*) and its implementing regulations (50 CFR 17.22 and 17.32) and NEPA (42 U.S.C. 4321 *et seq.*) and its implementing regulations (40 CFR 1506.6 and 43 CFR 46).

Janet Mizzi,
Field Supervisor,
Asheville Field Office.

